

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE ST PAUL HUMAN RIGHTS COMMISSION

W.H. Tyrone Terrill, Director, St. Paul  
Department of Human Rights ex rel.  
Carolyn Marier, Complainants, vs.  
American Red Cross, Respondent.

**ORDER QUASHING SUBPOENA**

By a written Motion filed with the Office of Administrative Hearings on June 28, 2000 the Complainants object to the subpoena dated June 27, 2000, issued by the Office of Administrative Hearings to the Director of the St. Paul Department of Human Rights. A written reply to the Motion was filed by the Respondent on June 30, 2000.

Meghan L. Riley, Assistant City Attorney, 400 City Hall and Courthouse, 15 West Kellogg Boulevard, St. Paul, MN 55102, represents the Complainants. Heather C. Sherman, Esq. of the firm of Littler Mendelson, 33 South 6<sup>th</sup> Street, Suite 3110, Minneapolis, MN 55402, represents the Respondents.

Based upon the written submissions filed by the parties, and for the reasons set out in the attached Memorandum:

IT IS HEREBY ORDERED: The subpoena issued June 27, 2000 by the Office of Administrative Hearings to the Director of the St. Paul Department of Human Rights is quashed.

Dated this 30th day of June 2000.

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GEORGE A. BECK  
Administrative Law Judge

**MEMORANDUM**

At the request of the Respondent, the Office of Administrative Hearings issued a subpoena for the production of documents to the Director of the St. Paul Human Rights Department on June 27, 2000. The subpoena called for all notes of interviews, all documents reviewed or relied upon, or any other documents related to the investigation of this case.

In a letter dated June 28, 2000, the Department of Human Rights objected to this subpoena on the grounds that OAH lacked authority to issue a subpoena for this case since this matter is not a contested case proceeding under the Minnesota

Administrative Procedure Act. The Department argues that these hearings are governed by St. Paul Legislative Code § 183.24, that does not provide the presiding law officer with subpoena power.

In its written reply the Respondent argues that OAH subpoena power can be applied to any case in which an Administrative Law Judge presides. It also points out that the City's Notice of Hearing and Complaint states that the OAH procedural rules apply where the St. Paul Legislative Code is silent. The Complaint also specifically references the OAH subpoena rule<sup>[1]</sup> and states that: "Subpoenas may be available to compel the attendance of witnesses or the production of documents." The Respondent argues that the City has adopted the OAH rules, including the subpoena rule, in its Notice of Hearing. The Respondent also argues that it is entitled to the documents requested under the Data Practices Act and that its right to a fair hearing outweighs any confidentiality concerns of the Department.

Strictly speaking, OAH subpoena power extends only to state agency contested case proceedings under the Administrative Procedure Act. The authority in statute<sup>[2]</sup> authorizing OAH to contract with local political subdivisions does not extend its subpoena power to those proceedings. It has been held that an ALJ may exercise those powers possessed by the local political subdivision under its own procedures.<sup>[3]</sup> In this case, however, the applicable statute does not provide subpoena power either to the hearing officer or the Human Rights Commission. Although the Notice of Hearing mistakenly refers the Respondent to the OAH subpoena rule, it also states that the OAH rules apply only when the St. Paul Legislative Code is silent as to procedures. Subpoena practice in this proceeding is governed by the St. Paul Legislative Code which states that:

- (5) The director may obtain subpoenas from the district court to compel the attendance of witnesses and the production of documents at any hearing.<sup>[4]</sup>

A document attached to the Notice of Hearing relating to the Human Rights Commission indicates that subpoenas are available to compel witnesses and that they are enforced by district court.

Since this not an APA contested case hearing OAH subpoena power does not apply unless OAH is exercising authority derived from the local political subdivision. In this case neither the hearing officer nor the St. Paul Human Rights commission has been granted subpoena power under the Legislative Code. Rather, the Legislative Code specifically indicates that subpoenas may be obtained in district court, under Rule 45.05. That rule permits issuance of subpoenas before witnesses or cases pending before any arbitrator, board, committee or other person authorized to examine witnesses.

The Respondent's subpoena for the production of documents is essentially a prehearing discovery request. The OAH discovery rule does not apply. It has been held that the APA is inapplicable to the proceedings of local political subdivisions.<sup>[5]</sup>

There is no due process requirement that prehearing discovery be allowed in administrative proceedings.<sup>[6]</sup> The Respondent may have certain disclosure rights under the Government Data Practices Act. Generally, an action to compel compliance with the Data Practice Act is brought in district court.<sup>[7]</sup> The matter must be heard as soon as possible. The Data Practices Act does contain a provision related to civil discovery that authorizes a presiding officer to determine “an action in the nature of an action to compel discovery”.<sup>[8]</sup> However, the data must first be discoverable under the rules of procedure appropriate to the action. In this case the Legislative Code does not authorize discovery. Nor can the reference in the Notice of Hearing to the OAH rules create a substantive right to discovery.

Since the hearing date is rapidly approaching, the City’s request for a hearing July 6 or later, to discuss this matter is denied. The parties are urged to discuss what factual material might be legitimately discovered without a further motion or order.

G.A.B.

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<sup>[1]</sup> Minn. Rule pt. 1400.7000.

<sup>[2]</sup> Minn. Stat. § 14.55.

<sup>[3]</sup> Whelan v. Minneapolis Special School District #1, 245 N.W. 2d 440, 444 (Minn. 1976); City of Inver Grove Heights v. Burnell Beermann, OAH File City-85-020-BC, Order dated August 5, 1985.

<sup>[4]</sup> St. Paul Legislative Code § 183.24 (5).

<sup>[5]</sup> Bahr v. City of Litchfield, 420 N.W. 2d, 604, 606 (Minn. 1988).

<sup>[6]</sup> Waller v. Powers Department Store, 343 N.W. 2d, 655, 657 (Minn. 1984).

<sup>[7]</sup> Minn. Stat. § 13.08, subd. 4.

<sup>[8]</sup> Minn. Stat. § 13.03, subd. 6.